

Minutes
KITTY HAWK TOWN COUNCIL
Monday, May 2, 2011
Kitty Hawk Town Hall, 6:00 PM

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Service Recognition: Ocean Rescue Director Cole Yeatts, 10 years
and Planning Director Joe Heard, 5 years
5. Surfing for Autism
6. Public Comment
7. Consent Agenda:
 - a.) Approval of April 4, 2011 Regular Meeting Minutes
 - b.) Revenues and Expenses Report for March 2011
 - c.) Tax Pick Ups and Releases for March 2011
 - d.) Authorization to Transfer Public Works Capital Outlay Funds
 - e.) Capital Project Ordinance for Sandy Run Park Phase II
 - f.) Annual Audit Contract for FY 10-11
8. Items Removed From the Consent Agenda
9. Public Hearing:
 - a.) Text Amendment: Proposal to replace the existing Chapter 32, *Soil Erosion & Sediment Control*, with updated standards and wording from the N.C. Division of Land Resources to make our standards compliant with current State standards.
10. Planning:
 - a.) Site Plan Review: Proposal to amend the currently approved site plan for a restaurant in the existing building at 4020 N. Croatan Highway by allowing use of the second floor of the outdoor deck on the front of the building for restaurant seating. The overall number of seats for the restaurant would not be increased under this proposal.
 - b.) Call for Public Hearing. Conditional Use Permit: Application for a conditional use permit to establish a family child care operation (maximum of five children) in a Village Commercial (VC-2) zoning district within the existing residence at 925 W. Kitty Hawk Road. A public hearing is requested to be scheduled for the June 6, 2011 Town Council meeting.
 - c.) Call for Public Hearing. Text Amendment: Proposal to amend Section 42-99(b)(7) by establishing more specific standards for the review and approval of conditional use permit applications. A public hearing is requested to be scheduled for the June 6, 2011 Town Council meeting.
11. New Business:
 - a.) Resolution: Requesting the North Carolina Utilities Commission Require Century Link to Transfer Their Equipment to the Recently Installed Utility Poles Along the US 158 Corridor in Kitty Hawk
 - b.) Schedule Public Hearing: Proposed FY 2011-2012
12. Reports or General Comments from Town Manager
 - a.) Update on Sandy Run Park Phase II Project

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- b.) Update on Kitty Hawk Storm Drainage Study
- c.) Compliment from Duck Volunteer Fire Department
- d.) Update on National Flood Insurance/Community Rating Service
- 13. Reports or General Comments From Town Attorney
- 14. Reports or General Comments from Town Council
 - Recreation Committee Update – *Councilwoman Klutz*
 - Property Across from Black Pelican (*added during meeting*)
- 15. Public Comments
- 16. Recess - Schedule date for Discussion of the Storm Drainage Study as presented by Albemarle & Associates

COUNCIL MEMBERS PRESENT:

Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called this meeting to order and welcomed everyone to the meeting.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence, the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

MPT Perry made a motion to approve the agenda as promulgated. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

4. SERVICE RECOGNITION: Cole Yeatts, Ocean Rescue Director and Joe Heard, Planning Director

Fire Chief Lowell Spivey read aloud the certificate recognizing Cole Yeatts' 10 years of faithful service to the Town of Kitty Hawk, April 16, 2001 to April 16, 2011.

Yeatts: I can remember my first day. I was in this room talking to one of the civic groups about rip currents, making an effort to save lives through education and prevention. It has been an

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honor to serve this community. I feel more entwined in this community and more in touch with the citizens than any place other than the place I grew up in. I have worked with the best boss in the world and without your support we would not be doing the things we do. And I am proud of it. Thank you.

Town Manager Stockton read aloud the certificate recognizing Joe Heard, Planning Director for 5 years of faithful and dedicated service to the Town, April 3, 2006 to April 3, 2011.

5. SURFING FOR AUTISM/Autism Society of NC OBX Chapter will host this event on August 12-13, 2011

Ms. Ann Sumners: I am stepping in for Eileen Lowery to talk about autism. April was "Autism Awareness" Month and we are trying to get awareness out to the community as well as information about an upcoming event in August. I do not know how many of you are familiar with autism but I am familiar with it from a grandparent standpoint as well as from a special education teacher standpoint. It is a complex, developmental disability that usually appears in the first three years of life. It affects their ability to communicate, social aspects, as well as general living. It is a spectrum disorder meaning there is everything from the traditional children with autism that we think of as portrayed in the movie Rainman to Asperger's syndrome.

Right now it affects about 1 in 110 children and for boys it is about 1 in 70. In Dare County the number of children that have been identified with autism has increased. There are about 30 children in the county that are identified and a number of other children with other identifications of speech and language or developmental disabilities that are on the spectrum but are not identified with that label right now. It is a lifelong disability. The ones that are diagnosed or identified early and with early intervention will benefit and become lifelong learners.

Because of where we live we are somewhat at a disadvantage with not having resources available as opposed to a metropolitan area like Raleigh. That made us start thinking about what to do for our children in this area. Last year, Eileen Lowery and Mark Slagle came up with a surfing event that was held in August and it was awesome. With each child there were two surfers and one skilled volunteer. The skilled volunteer was either a teacher, an occupational or speech therapist, or a parent. When the children registered, information was given about the child because they may have sensory issues. The information allowed the skilled workers a rapport with the child. The outpouring of care was phenomenal and the surfers that came out to help gave their whole day.

This year we are trying to expand to 60 children. It is scheduled for August 13 and is going to be in Nags Head around the Comfort Inn. There will be a "meet and greet" on Friday night and the surfing event will be Saturday morning from 9 AM to 1 PM. It is a big undertaking to go from 30 to 60 children and we have been working on it since the last one ended. We are

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sponsored by Hurley and are trying to do this at no cost to the families because insurance generally does not cover any help with autism as far as treatments. There is a website "Surfing for Autism" that allows someone to sponsor a child. We have been to a number of organizations throughout the county to bring about awareness.

Following a short video on last year's event Ms. Sumners thanked council and offered to answer any questions.

Hearing no questions Mayor Perry thanked Ms. Sumners for the presentation.

6. PUBLIC COMMENT

There was no public comment.

7. CONSENT AGENDA. Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

- a.) **Approval of Minutes.** April 4, 2011 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*
- b.) **Revenues and Expenses Report for March 2011.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- c.) **Tax Pick Ups and Releases for March 2011.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- d.) **Authorization to Transfer Public Works Capital Outlay Funds.** This transfer will allow up to \$5,000 to be used from the \$15,000 capital outlay for playground equipment. The money will be spent on gutters for the Town Hall. *(An affirmative vote for the Consent Agenda will approve this transfer.)*
- e.) **Capital Project Ordinance for Sandy Run Park Phase II.** This action will establish funding and a budget for completion of the second phase of the Sandy Run Park. *(An affirmative vote for the Consent Agenda will approve this ordinance.)*
- f.) **Annual Audit Contract.** This contract to audit the town's accounts for FY 10-11 is with Dowdy & Osborne LLP, CPA's and is in the amount of \$17,750.00. In 2009 the town council approved extending audit services for two years for fiscal years ending 2010 and 2011 for an amount of \$17,750.00 each year. *(An affirmative vote for the Consent Agenda will approve this contract.)*

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Councilwoman Klutz, seconded by Councilman Bateman, moved to approve the Consent Agenda. The vote passed unanimously, 5-0.

8. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed from the Consent Agenda.

9. PUBLIC HEARING:

a.) Text Amendment. Proposal to replace the existing Chapter 32, Soil Erosion & Sediment Control, with updated standards and wording from the N.C. Division of Land Resources to make our standards compliant with current State standards.

Heard: There are numerous sections of Chapter 32, Soil Erosion and Sedimentation Control that are proposed to be amended as part of this text amendment in order to comply with changes with the North Carolina Sediment Pollution Control Act as well as some of the adopted policies of the North Carolina Division of Land Resources. The proposed ordinance is based on the model ordinance prepared by the Division of Land Resources and this would replace the town's current standards for erosion and sediment control. The intent of the ordinance is to help as development projects occur in the town. It is to help owners stabilize the property during and after development occurs in particular in an effort to prevent erosion and any damage that might occur as a result of that to adjoining properties, adjoining roads, and adjoining waterways. The Town of Kitty Hawk is one of twenty-nine municipalities and twenty-four counties that voluntarily participate in North Carolina's Soil Erosion and Sedimentation Control program. The town is certified as a local program that can issue permits and conduct enforcement activities on behalf of the Division of Land Resources. As part of its commitment to this program the town is required to adopt and enforce the current State standards. At its meeting on February 17th the planning board reviewed the proposed ordinance and voted unanimously to recommend approval of the proposed text amendment to update the town's current standards.

Mayor Perry: *Thank you. Has anybody signed up to speak at the public hearing?*

Clerk Morris: *No sir.*

Mayor Perry: *Does anyone wish to speak at the public hearing? Let the record show that no one came forward. Is there a motion to go back into regular session?*

MPT Perry: *Should we pose our questions now?*

Michael: *If you want to ask Joe questions now would be the time to ask them.*

MPT Perry: *I would like to direct attention to Section 32.67. These are not numbered pages but it is two pages from the back. If everybody is on that section please jump down to subsection*

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"(d) Investigation." "The Town of Kitty Hawk shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for the purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity." I have a great deal of trouble with the words after "as prescribed in this ordinance." In other words the section "for the purpose of any land-disturbing activity" seems overly broad to me.

The reason I bring it up now is I spoke with Joe about this before we got to this point and in fact went one step further. Steve was good enough to explain to me and try to convince me that it was not overly broad. Basically in a regulatory way stepping on private property rights, 4th amendment issues ... things of that nature. Joe, what I am going to ask you to do is explain for council your rationale of why that was put in there in that way. And, does it follow exactly the wording, with the exception of the Town of Kitty Hawk of course, what the model showed you to put in there?

Heard: If you will give me a moment, I will be glad to double check that with the model ordinance. I believe it is identical. The short answer as to why it is in there as it is because that is exactly what the model ordinance suggested as far as the procedures for inspecting and investigating matters. From having attended the annual training and workshops that are required to participate in the program, the Division of Land Resources has had to enforce particular cases that end up going to court. Based on their experiences with different courts in this State they have crafted some of this language particularly as it relates to this section. In an effort to put the best light forward when they go to court they are looking at putting wording in there that does allow inspections of that nature.

You posed a similar question to me previously and I would certainly be glad to read into the record my response as far as how the town looks at this and adding in guidance Mr. Michael has provided us as far as the best way for the town to go about doing inspections. What I did for that response was to outline how we go about pursuing information if we get a call about some property owner we suspect may be in violation of this ordinance.

Our first step is to go to the property, talk with the owner or contractor if there is someone actively working to find out what is going on. If those individuals are unavailable we will observe what we can from public vantage points. Those being a street, front yard, up to the front door if it is a case where we are going up to knock on the door. If the work is occurring in an area that we cannot see we would then make other efforts to contact the owner or contractor to meet us at the property. In other words, as a policy and practice, we do not just go around to somebody's rear of the property or an area that we cannot observe without attempting to get the owner's consent and hopefully meet them out at the property if at all possible.

If we are unable to obtain the owner's consent then we would have to go to the step of obtaining a search warrant in order to conduct that inspection. That is the procedure we use. The guidelines defined by the State in the model ordinance are broader than that. They also

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recommend that we actually put on the permit we issue that we have the right to go out and inspect. As part of getting a permit the owner or contractor is giving us the right to go out and inspect their work at any time during an active project as well.

MPT Perry: I do not think any of us have a problem with that. That is part of the permitting process but what concerned me when I read this was the fact this gives you broad authority to go out for anything that you might decide to do. Now the policy that you have just given us and read back to me is the kind of policy I think most of us want to follow. What concerns me is what happens in the future when you are not here or a new council comes in and we give them this kind of latitude. This town has already been through that kind of issue before and I am very reluctant to provide carte blanche, broad policy to enter property unless there is some reason to do so. Even the police, when they stop a car, have to have probable cause. This does not require, in my mind, probable cause and for that reason that particular part of the sentence would have to be removed if I am going to vote yes. The rest of it I have no problem with. I wanted to bring it to your attention so it did not get overlooked. We see this in other things such as the flood damage control ordinance. Where someone can go out, shine a badge, say they have a right to be there and you do not have the right to stop me. That really bothers me. I do not like it at all and I do not want to be a party to that in something that I am voting on. So now I leave it for your discussion.

Klutz: I would certainly agree to take that part of the sentence out because it does seem to be a little too permissive of people coming on your property without any real reason to do so.

I have a question regarding the language in Section 32-42(c) and its relationship to 32-3(f). The first part that I refer to says "The Town of Kitty Hawk reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required." 32-3(f) says "Notwithstanding the general requirement to obtain plan approval prior to undertaking land-disturbing activity, plan approval shall not be required for land-disturbing activity that does not exceed 5,500 square feet in surface area." The statement, I think, is very broad. Does that mean the Town of Kitty Hawk reserves the right to request preparation and approval of a plan in any instance where extensive control measures are required? It seems to me that it would be prohibited for anything under 5,500 square feet.

Heard: It would only apply to anything over 5,500...that is the intent. In the Town of Kitty Hawk 5,500 square feet is the cutoff that was previously established. Single family residences do not exceed that so quite often would not be required to get this type of permit.

Klutz: What you are saying is the 5,500 square feet does not really matter if the Town of Kitty Hawk thinks that they should get a permit because of extensive control measures or because extensive control measures are required and whose judgment ...

Heard: The intent of what I was trying to say is that it only applies if it is 5,500 or greater. We do not apply these standards in any other circumstance.

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Mayor Perry: *That was my understanding. Anything less than 5,500 square feet we did not involved in. Is that right?*

Heard: *The town does have a provision for a land-disturbance permit. That is a separate process and that is under ... there is a provision that the council adopted for that and it is much less intensive as to what goes into it. The main reason we do it is to establish the current elevation of the property, the original grade before fill is put on a property. That is really the main purpose it serves for us but it also gives us an opportunity ... usually, as the person reviewing that type of permit, I will go out to the site and meet with the owner and help trouble shoot. See if it is a property where it looks like there could be work causing erosion on another property. We will talk with them about putting up a silt fence or something like that. But it can also be for under 5,500 square feet and it is only for undeveloped properties.*

Mayor Perry: *That is for when someone is building a house. Is that right?*

Heard: *Typically yes.*

Mayor Perry: *You get a building permit and you go ...*

Heard: *It is for the original development of the property ...*

Mayor Perry: *Before they disturb it.*

Heard: *Correct.*

Mayor Perry: *So you know basically that was the elevation.*

Klutz: *It seems we are putting the rules and regulations out there for requiring this plan so what is the point of having that statement?*

Heard: *Tell me specifically the one that ...*

Klutz: *I do not understand "The Town of Kitty Hawk reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required." It seems to me we go through this whole process for land-disturbing activity and scope and exclusions and we set forth all of that and this is a catch all that says "whatever The Town of Kitty Hawk wants to do they can do." That is how I read that.*

Heard: *I can certainly check with the Division of Land Resources and see if they would mind if we chose to remove that sentence.*

Klutz: *I do not understand their intent. And in comparing this to what was there before there is a substantial reporting requirement not there previously. It is not something I think most people*

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would really want to get involved in. I wonder what the point of all the reports that has to be sent to the State is and who is going to do what with them? I am accustomed to environments where people have to report. You report it because you always had to and there is a regulation that says you have to and nobody ever really understands why. What is anybody going to do with it? And it is a lot of information they are asking for. Do we have to do this? Doesn't it say we voluntarily signed up?

Heard: The reporting requirements are part of State law. I specifically asked that of the staff at Land Resources. It was a significant change that occurred in the fall of last year for all communities and came about as a result of a particular law suit. The standard effectively provides notice concerning the responsibility of the property owner or developer. They cannot turn around and say "okay we were unaware of these problems or we did not receive notice about this violation." And they cannot say "well you were responsible for inspecting it all along." It puts more onus on the property owner or the developer of the property.

Klutz: Or whoever buys the property.

Heard: It shifts some of the responsibility from the public sector to the private in that regard.

Klutz: You know I understand the reaction to law suits but I think some of these regulations have gotten way too complicated and adds costs.

Mayor Perry: You said something about twenty-nine towns and twenty-four counties participate in this?

Heard: That is correct.

Mayor Perry: How about the ones that do not participate?

Heard: The ones that do not participate are still covered by the State. The State reviews everything. In their ordinance the minimum is one acre so any project over an acre in size would have to get their permit from the State. The State would review it. There are significant challenges with that now with all of the funding issues and cuts that have been made. Right now the State staff is much more reliant on the participating local programs than they have ever been. They are only getting around to doing an inspection on a site at the most once every six months. There are some properties they say it is once a year. I do not know if it was intended to be a joke but during the training a comment was made that there was a project they had for a new McDonalds. The inspector went out to do the initial inspection and ordered a burger at the drive thru because it was already built. It is a real challenge for them and they are really looking at ways for the local programs to be a part of it so they can stretch their resources a little further. It offers our citizens a chance to get their permits quickly, have a local person who can go out and visit on the site with them, talk through any issues and help troubleshoot if need

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be. People can have someone they can communicate with locally as opposed to having to call Raleigh.

Mayor Perry: *So we use 5,500 square feet as a minimum versus what?*

Heard: *One acre is the State's requirement.*

Reid: *That is over 42,000 square feet.*

Mayor Perry: *That is a big difference.*

Reid: *That was established a long time ago, even before I came to work for the town.*

Mayor Perry: *I know the 5,500 square feet has been in existence pretty much from the beginning.*

Reid: *Yes and this applies to commercial properties. To my knowledge, in the time that I managed the program it was never applied to residential. It was for commercial property. The concept behind the ordinance is to protect the adjacent properties from soil erosion and runoff.*

Klutz: *There were all kinds of time requirements in the ordinance. If someone does not react within 30 days or whatever the days are, then basically the developer gets a pass. Like the McDonalds was already built. Obviously if they are not inspecting but every six months or even a year then the days they have in the ordinance only applies to the local programs and not to themselves. They are not delaying any projects. So what we are doing is taking on a State requirement. I am not sure that if we had a Sediment Control ordinance that we came up with ourselves if it would have all this stuff in it. Except some of it is required now correct? There is a State law about all the recording that has to be done.*

Heard: *Yes. Virtually everything in the proposed ordinance mirrors the State ordinance. We removed some parts that were not applicable to coastal communities, like trout streams and things of that nature.*

Klutz: *If we have a development and were not part of the program, does that mean anyone disturbing more than an acre of land would have to wait six months to a year for an inspector from the State to actually begin work?*

Heard: *The State would issue the permit without having visited the site most likely. The State has 30 days to review an application. That is one of the big differences. They would probably be pushing the envelope whereas we are typically able to turn it over same day or within a couple of days at the most if we have a complete application. They typically would not hold up issuing the permit but delay it a month and that might be significant for a developer.*

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Klutz: *The section 5(m) talks about a plan that has been approved by the town and it turns out the plan which the developer came up with, and the town agreed to, does not work. Work shall stop and there are all kinds of consequences. My question is how often does that happen? It seems if everybody has all the permits and if it did not go the way it was supposed to there is a lot of cost added to their project by stopping the press and preparing another plan. Has that always been a part of this or is this one of the new wrinkles?*

Heard: *I have an ordinance in which I highlighted the new material and will check.*

Klutz: *The paragraph title was "Required Revisions."*

Heard: *Yes that is new. It is relatively new, within the last couple of years. When anything gets to the point of becoming a legal issue, the town is not involved in the enforcement at that point. Our job is to do the initial review, document any violations that are found, and make the initial attempts to bring it back into compliance. Since I have been here the worst we have had is issuing a notice of violation on a couple of occasions where we had notified somebody and they took their time attempting to rectify it while there was still erosion occurring. We issued a notice of violation and it was corrected within a week. We have not gotten past that point but should a case get past that point, the State takes over. All they ask from us is to document everything to the best of our ability as far as when it was inspected, what we saw, have photographs. They take it from that point and they are the ones who are directly involved in any court case going forward or anything else.*

Klutz: *So we cannot get sued over this?*

Heard: *Not unless somebody was doing something outside the scope of their job perhaps.*

MPT Perry: *We can always get sued.*

Klutz: *And we volunteered for this?*

Mayor Perry: *It could all go away as far as I am concerned but it is like the CAMA office. We would have done away with it years ago if it were not for the local citizens being able to get minor permits without going to the Elizabeth City office.*

Reid: *Can I pose another question? I think when I was doing this ... does the State pay us for managing the program?*

Heard: *Yes. We do get paid for each permit.*

Reid: *It is not huge and it is not helping our budget much but it is not that we volunteered to do it and then we are doing it for free. We receive some income in order to manage the program at the local level. Otherwise it would go back to the State which has an office I believe in Little*

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Washington. If you have a problem it takes a while for them to get here so there were some advantages to having the program run on a local level.

Klutz: We are doing it for the benefit of our citizens and people who have to do business in the Town of Kitty Hawk.

Heard: They benefit significantly.

Reid: If you lived behind a commercial site and we did not have this ordinance and there was sand and water pouring down onto your property you would be very upset we did not have this ordinance.

Klutz: What I understand is whether we have this ordinance or not the State covers it.

Heard: For development activities of an acre or greater.

Mayor Perry: Do you just use this for commercial?

Heard: There is an occasional residential property where they are building a large house, a pool, and parking, where it might trigger something greater, but almost all of them are commercial properties.

Klutz: I do not want to vote on this.

MPT Perry: We have to close the hearing first. Check on the question for Emilie and I want everything after that word ordinance removed. Then you all have to decide if you agree with me or not.

Klutz: My objective would be to have the line about "Kitty Hawk reserving the right" to be checked out with the State to see if it is okay for it to come out.

Mayor Perry: Anybody else? Richard do you have anything?

Reid: I want to make clear I understand what Gary is asking. In paragraph (d) everything after "ordinance comma" comes out.

MPT Perry: Yes.

Reid: Okay. Just making sure I understand what you are asking.

MPT Perry: It still gives him the power to conduct inspections or investigations if there is a reason to do so. I want to protect the citizens from an overzealous government that is all I want to do. We need to close this. We are still in public hearing.

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Mayor Perry: *Yes and I question that. I thought we only had to ask questions during public hearings for conditional uses. Please explain that to me again.*

Michael: *Any time you are hold a quasi judicial public hearing, and this one is not, but just as a matter of course all of your public hearings should be handled this way. The easiest way to do it is not to close your public hearing until you are through asking questions of anybody you want to.*

Mayor Perry: *But we could have ...*

Michael: *Because this is not a quasi judicial you could have closed it but just so you do not miss it one time it is easier to do it this way.*

Mayor Perry: *All right. We are finished asking questions and have given direction.*

MPT Perry made a motion to go back into regular session. Mayor Perry asked if Councilman Reid had something further to say and he replied he did not. **Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.**

MPT Perry said he thought council should make a motion to table this until the next meeting.

Attorney Michael suggested if council wanted to bring it back at the next meeting to make a decision they could as long as it is continued to a date and time certain.

MPT Perry asked PD Heard if that was enough time to get answers from the State and he replied yes.

MPT Perry made a motion to table this item until June 6, 2011. Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.

10. PLANNING:

a.) Site Plan Review. Proposal to amend the currently approved site plan for a restaurant in the existing building at 4020 N. Croatan Highway by allowing use of the second floor of the outdoor deck on the front of the building for restaurant seating. The overall number of seats for the restaurant would not be increased under this proposal.

Heard: *This proposal is requesting an amendment to the currently approved site plan for a restaurant in the existing building at 4020 N. Croatan Highway. Specifically the applicant is seeking to use the second floor of the outdoor deck in front of the building for restaurant seating. I have highlighted that area on the site plan to give you a sense of where that is on the building. On the site plan the bottom part would be North Croatan Highway and the front of the building is facing the bottom. The number of seats in the restaurant would remain at 180 and would not*

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be increased under this proposal. In September of 2003 the town council granted approval for this site for the restaurant that became Hooters and the approval specifically included seating for 170 people inside and an additional 10 people on the ground floor patio that was outside. Specifically during the discussion and presentation of the proposal, the applicants verified and the town agreed it was their understanding the second floor deck would only be used as a waiting area for customers. It would not have serving tables or restaurant seating. What is being proposed is not a physical amendment to the site plan. There would not be anything that changes on this site other than the fact that the second floor deck would be allowed for use for restaurant seating.

An item that was important when we reviewed this was related to the parking calculations. As part of this, by adding that deck, they are adding 845 square feet of seating area to the restaurant and parking for restaurants in Kitty Hawk is based on that square footage. Under the initial approval in 2003 the parking standard at that time was one space per 100 gross square feet of floor area x 1.15. Under that calculation a minimum of 72 spaces were required and 72 were provided. Those still exist on site. In 2006 the town amended the parking standards for restaurants and removed that multiplier. The standard changed to one parking space per 100 gross square feet period. That reduced the requirement for this site from 72 spaces to 63 and with that in mind, even with the additional 845 square feet, the calculation that results from that would be a total of 71 parking spaces required. They have 72 spaces in the existing lot and it appears due to that change in the parking calculations the site is still fully compliant with the parking. I will be glad to address any other issues and to note for the record at its meeting on April 14th the planning board voted unanimously to recommend approval for this site plan amendment.

Councilman Bateman made a motion to approve an amendment to the previously approved site plan to permit outdoor seating on the second floor deck at the existing restaurant at 4020 North Croatan Highway and the Town Council finds that approval of this site plan amendment is consistent with the Town's adopted CAMA Land Use Plan. Councilman Reid seconded.

Mayor Perry asked if there was any discussion and Councilman Bateman asked why they needed approval if they have the parking spaces needed.

Heard answered it was a specific aspect of the original plan for the proposed seating area not to be used for that purpose. After discussing it with the manager it was determined council might be interested in looking at that particular issue. There may have been other reasons why that area was not to be used. There may have been other concerns involved.

Mayor Perry offered that council previously said it was not allowed so in order to allow it he had to come back for approval.

The vote was unanimous, 5-0.

b.) Call for Public Hearing. Conditional Use Permit: Application for a conditional use permit to establish a family child care operation (maximum of five children) in a Village Commercial (VC-2) zoning district within the existing residence at 925 W. Kitty Hawk Road. A public hearing is requested to be scheduled for the June 6, 2011 Town Council meeting.

Councilman Reid made a motion to set a public hearing at the town council meeting on June 6, 2011 to consider a conditional use permit application to establish a family child care operation within the applicants' residence at 925 W. Kitty Hawk Road. Councilwoman Klutz seconded and the vote was unanimous, 5-0.

c.) Call for Public Hearing. Text Amendment: Proposal to amend Section 42-99(b)(7) by establishing more specific standards for the review and approval of conditional use permit applications. A public hearing is requested to be scheduled for the June 6, 2011 Town Council meeting.

Councilwoman Klutz moved to set a public hearing regarding the proposed text amendment to conditional use permit review and approval standards of the Town Council meeting on June 6, 2011. Councilman Reid provided a second and the vote was unanimous, 5-0.

11. NEW BUSINESS

a.) Resolution: Requesting the North Carolina Utilities Commission Require Century Link to Transfer Their Equipment to the Recently Installed Utility Poles Along the US 158 Corridor in Kitty Hawk.

Council discussed the letter dated April 18, 2011 from Kevin McCarter, CenturyLink to Robert Bennink, Jr., General Counsel for the North Carolina Utilities Commission. It stated CenturyLink has plans to remove the facilities currently on the wooden poles and to bury the cable at an anticipated cost of \$250,000 but money has not been budgeted for it this year. It may be 2012 before the work can be completed.

Councilwoman Klutz said she thought it was a business decision on CenturyLink's part whether to attach the cable to the poles or to put it underground and thought the resolution should encourage them to do one or the other. Also, the "whereas" that states they are refusing to do the work is no longer true.

MPT Perry agreed it is hard to say they are refusing to do the work when they sent a letter saying they will do it. That paragraph should come out and then re-worded in a way that reflects more adequately what they have said they will do, if council wants to send it at all.

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Mayor Perry asked Councilwoman Klutz if she would volunteer to reword the resolution and she agreed. There was a council consensus for it to be rewritten and brought back at the recessed meeting.

b.) Schedule Public Hearing: Proposed FY 2011-2012 budget as Presented by the Town Manager

Manager Stockton stated council and staff have had two workshops and there is a recommended budget to move forward to a public hearing. The proposed budget document includes the budget message, budget ordinance, general fund revenue and expenditure summaries, departmental budgets, budget development calendar, council goals, work objectives and financial policies, board and committee work plans, position classification salary scale for FY 2011-2012, schedule of fees, capital expenditures for FY 2011-2012, approved positions, longevity bonuses, retiree health insurance, and separation allowance.

Councilwoman Klutz made a motion that a public hearing be set for the regularly scheduled town council meeting to be held on June 6, 2011 for the purpose of hearing input from the public relative to the proposed fiscal year 2011 - 2012 budget. I further request the town clerk advertise said public hearing in accordance with State Statute. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

12. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) Update on Sandy Run Park Phase II Project – Manager Stockton reported that Quible continues to work on the plans and the project manual said the town can obtain approvals from the review agencies. They are working to make submissions to NCDENR Division of Coastal Management, US Corps of Engineers, and the Division of Water Quality for stormwater management permit review and the 401 Water Quality Certification and the Division of Land Quality for soil and erosion and sedimentation control plan. Under the NCDENR review period the construction plans and project manual can be adjusted to meet funding requirements and the town's approval. We will be meeting with Brian Rubino of Quible and Associates on Wednesday of this week to get a further update on this project.

b.) Update on Kitty Hawk Storm Drainage Study – On the Kitty Hawk Storm Drainage Study Manager Stockton said Mr. DeLucia reports he met with his project team last Friday to finalize the initial evaluations, review all of the received questionnaires, and formulate recommendations for council's consideration. They have requested a meeting with council in May to go over their recommendations and that will be discussed later under the recessed meeting item.

c.) Compliment from Duck Volunteer Fire Department – Manager Stockton said he has received a compliment from the Duck Volunteer Fire Department relative to Kitty Hawk's assistance on Saturday, April 16, 2011 as a result of the tornado that went through the Town of Duck. Duck Fire Department said they had some 102 structures damaged as a result of the

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tornado and Kitty Hawk's public works department and fire department helped them with the removal of trees and their assessment of the damage.

d.) Update on National Flood Insurance/Community Rating Service – The town recently had an evaluation of its flood damage prevention program and it shows we will maintain a Class 6 flood insurance rating Manager Stockton reported. The evaluation was conducted by the Insurance Service Offices Incorporated. As a result of the community ratings system classification 6, property owners in Kitty Hawk received a discount on insurance rates saving on an average of \$141.00 on flood insurance policies last year.

13. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

Attorney Michael said he did not have anything further for council.

14. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

a.) Recreation Committee Update – Councilwoman Klutz reported the Recreation Committee met on the last Tuesday of April and went over updates on all of the projects that are currently in progress. Chairwoman Buckner was very complimentary on the information provided by Manager Stockton for them to review and it was also appreciated by all of the committee members. There was one item that came up and it was in relation to the town's deceased engineer Bob Stewart. The committee would like to honor him with a plaque at some place in the park because of the work he had done on it. (There was council concurrence for the plaque.)

b.) Property Across from the Black Pelican - Mayor Perry said it seems there is still difficulty on getting in touch with the owners.

Manager Stockton said one of the telephone numbers he has for Mr. Hall was disconnected and the other one was not a good number. And he had sent the proof of ownership of the property to Mrs. Baggett.

Councilman Bateman said he had talked with Mrs. Baggett and the last time she denied any involvement with the property and denied knowing Mr. Hall who is supposedly her brother-in-law. She said if she owned the property she would be glad to give the town an easement. He offered to call her again.

Councilwoman Klutz said that intersection was a topic of conversation with the Recreation Committee and they want to see a crosswalk there. She explained about the property across the street and that the work being done on it.

15. PUBLIC COMMENT

1. Joe Heard, Planning Director. *I want to recognize one other person in regards to the incident that happened in Duck. Dennis Speight our Building Inspector has also provided the Town of Duck with his services. Their building inspector was out of town so Dennis spent a good bit of time assisting the town as part of our reciprocal agreement. He really went above and beyond the typical expectations of that agreement in helping them with their recovery efforts and getting a lot of those property owners going again. I just wanted to publicly express my appreciation for his efforts.*

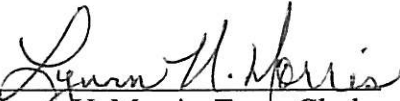
16. RECESS


Schedule date for Discussion of the Storm Drainage Study as presented by Albemarle & Associates

Following discussion on a date to hold the recessed meeting, MPT Perry made a motion to recess this meeting until May 16, 2011, 9 AM, Kitty Hawk Town Hall. Councilman Bateman seconded and it passed unanimously, 5-0.

Time was 7:22 PM.

These minutes were approved at the June 6, 2011 Council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor